

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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OZEM THOMAS,

Petitioner,
-against-

UNITED STATES OF AMERICA,

ORDER

10-CV-4588 (SJ)
98-CR-0860 (SJ)

Respondent.

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JOHNSON, Senior District Judge:

Petitioner Ozem Thomas, a federal prisoner appearing *pro se*, moves for relief pursuant to Fed. R. Civ. P. 60(b)(6) “asking that he be allowed to re-open his Title 28 U.S.C. § 2255 proceeding, and, or be granted the relief sought herein.” By order dated April 30, 2009, the Court denied petitioner’s motion to vacate his federal sentence under 28 U.S.C. § 2255. See Thomas v. United States, No. 07 CV 3751 (SJ), appeal dismissed, Mandate, No. 09-2281-pr (2d Cir. Jan. 7, 2010).

“[R]elief under Rule 60(b) is available for a previous habeas proceeding only when the Rule 60(b) motion attacks the integrity of the previous habeas proceeding rather than the underlying criminal conviction.” Harris v. United States, 367 F.3d 74, 77 (2d Cir. 2004); Rodriguez v. Mitchell, 252 F.3d 191 (2d Cir. 2001). Here, petitioner challenges the underlying criminal conviction in this Rule 60(b) motion and not the integrity of the § 2255 proceeding.

Accordingly, this motion is denied as beyond the scope of Rule 60(b). Gitten v. United States, 311 F.3d 529, 534 (2d Cir. 2002). Petitioner may move in the United States Court of Appeals for the Second Circuit for an order authorizing the district court to consider a second or successive § 2255 motion. See 28 U.S.C. § 2255; 28 U.S.C. § 2244(b)(3)(A).

SO ORDERED.

Dated: October 20, 2010
Brooklyn, New York

/S/

Sterling Johnson, Jr., U.S.D.J.